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In the Supreme Court of the United States

OCTOBER TERM, 1979

PITTSBURGH METRO AREA POSTAL WORKERS UNION, AFL-CIO, PETITIONER

v.

UNITED STATES POSTAL SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11-12) is reported at 609 F. 2d 503. The opinion of the district court (Pet. App. 13-25) is reported at 463 F. Supp. 54.

JURISDICTION

The judgment of the court of appeals was entered on October 12, 1979. The petition for a writ of certiorari was filed on January 9, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court properly dismissed this action to enforce the settlement of a grievance arising under a national collective bargaining agreement on the ground that petitioner, which is neither an exclusive

bargaining agent nor a signatory to that collective bargaining agreement, lacked standing to bring the action under 39 U.S.C. 1208(b).

2. Whether the district court properly dismissed this action on the ground that petitioner failed to exhaust contractual grievance and arbitration procedures.

STATUTORY PROVISION INVOLVED

The pertinent portion of the Postal Reorganization Act of 1970, 39 U.S.C. 1208(b), is set forth at Pet. 2.

STATEMENT

Petitioner Pittsburgh Metro Area Postal Workers Union brought this action against the United States Postal Service to enforce a settlement of a grievance under a collective bargaining agreement (Pet. App. 13). That agreement was negotiated by the Postal Service and four national postal employee unions. Petitioner, which represents certain Pittsburgh area postal workers, was not a signatory to the agreement (Pet. App. 18; Agreement, pages 1, 123).[1]

Local unions, such as petitioner, have certain rights and duties under the collective bargaining agreement, among them the right to negotiate "local memoranda of understanding" on certain specified subjects, provided the terms of the local provisions are not inconsistent with the national agreement (Pet. App. 18; Agreement, Art. XXX). Grievances for violations of the local agreements, like grievances under the national agreement, must be

[1]"Agreement" refers to the relevant collective bargaining agreement, which was filed as Exhibit A to the Complaint. A copy of the agreement may be found in a pocket in the back inside cover of the appendix to the briefs in the court of appeals.

processed through the grievance-arbitration procedure of the national agreement (Pet. App. 18; Agreement, Art. XV). No grievance may be submitted to arbitration without the written authorization of the president of the national union concerned (*ibid.*).

This case arose out of two contract disputes, both involving the distribution of secondary mail, *i.e.*, mail that is ready for sorting into bundles for individual carrier routes (Pet. App. 13). Before July 1976, most incoming secondary mail was distributed at the Main Office in downtown Pittsburgh for 35 branches and stations. Seven branches and stations, however, distributed their own secondary mail (Pet. App. 13-14). On July 12, 1976, the Postal Service transferred secondary mail distribution for three of the seven stations to the Main Office. On October 7, 1976, petitioner filed a grievance alleging that some secondary mail was still being sent to those three stations and that this violated provisions of the local and national agreements (Pet. App. 14; A. 24a-25a).[2] The dispute was settled without resort to final arbitration after the Postal Service agreed that "the amount of mail sent to the stations and branches must be predicated on their capabilities to work this mail without jeopardizing any overtime opportunities for mail processing clerks" (Pet. App. 14). This preserved maximum overtime opportunities for clerks at the Main Office with respect to that mail (*ibid.*).

A second dispute arose in April 1978, when the Postal Service announced a decision to transfer secondary distribution of two classes of mail, Irregular Parcel Post and First Class Small Parcels and Rolls, to certain

[2]"A." refers to the appendix to the briefs in the court of appeals.

stations and branches. Petitioner objected to this decision, but instead of filing a grievance, it brought this suit in the United States District Court for the Western District of Pennsylvania, contending that the second decision violated the settlement of the first dispute (Pet. App. 14-15). Jurisdiction was alleged on the basis of the provision governing suits for violation of contract in the Postal Reorganization Act of 1970 (PRA), 39 U.S.C. 1208(b).

The district court dismissed the suit on two independent grounds. First, it held that petitioner, as a local union, lacked standing "to enforce the Postal Service's contractual obligations under the national agreement," noting that petitioner had not shown that it had authorization from the national parent union (American Postal Workers Union) to bring the suit (Pet. App. 18). Second, it held that petitioner had failed to exhaust the contractual grievance procedures (*id.* at 21-24). The court noted that it was unclear whether the facts leading to the two disputes were sufficiently similar to permit bypassing the grievance procedure on the second dispute, and it observed that such questions are themselves properly resolved through grievance and arbitration procedures (*id.* at 21).[3]

The court of appeals affirmed "for the reasons set forth in the district court opinion" (Pet. App. 11-12).

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[3]The district court also suggested that the 1976 settlement was not judicially enforceable because the national agreement did not designate settlement agreements (in contrast to arbitrators' decisions) as final and binding (Pet. App. 18-20).

ARGUMENT

The decisions of the courts below are correct and do not conflict with decisions of this Court or any court of appeals.[4] Further review is accordingly not warranted.

1. Petitioner contends (Pet. 5) that, because it is a labor organization, it qualifies as a "labor organization" for purposes of 39 U.S.C. 1208(b) and is thus entitled to sue under that provision to enforce a collective bargaining agreement with the Postal Service. The employees on whose behalf petitioner sues, however, are members of a bargaining unit that is national in scope, and it is petitioner's parent union that the Postal Service has recognized as the exclusive bargaining representative for that unit, pursuant to 39 U.S.C. 1203. See *United States Postal Service*, 208 N.L.R.B. 948 (1974). The national union, not petitioner, negotiated and signed the basic collective bargaining agreement that petitioner seeks to enforce. Cases decided under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. 185(a), which petitioner concedes (Pet. 5-6) is analogous to Section

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[4]The question whether local postal unions have standing to bring suit under Section 1208(b) is at issue in the Fifth Circuit in *National Association of Letter Carriers, AFL-CIO Branch No. 421* v. *United States Postal Service*, and *American Postal Workers Union, AFL-CIO, San Antonio Local* v. *United States Postal Service*, Nos. 78-2647 and 78-2691 (consolidated), and in the Fourth Circuit in *Columbia Local, American Postal Workers Union, AFL-CIO* v. *William F. Bolger, et al.*, No. 79-1273.

At least two district courts appear to have permitted local branches of a national postal union to bring actions involving the national agreement. *American Postal Workers Union, Dallas, Tex. Area Local* v. *United States Postal Service*, 396 F. Supp. 608 (N.D. Tex. 1975); *American Postal Workers Union* v. *United States Postal Service*, 356 F. Supp. 335 (E.D. Tex. 1972). In neither case, however, was the question of the locals' right to bring the action put in issue.

1208(b) of the PRA,[5] as well as cases decided under the Railway Labor Act, 45 U.S.C. 151 *et seq.*, under which similar problems involving the relationship between local and national unions arise, clearly establish that a local union such as petitioner generally may not sue to enforce provisions of a national collective bargaining agreement to which it is not a party. See, *e.g.*, *Local 13, International Longshoremen's Union* v. *Pacific Maritime Ass'n*, 441 F. 2d 1061, 1064 (9th Cir. 1971), cert. denied, 404 U.S. 1016 (1972); *Local 12405, District 50, UMW* v. *Martin Marietta Corp.*, 328 F. 2d 945 (7th Cir. 1964); *District 100, IAM* v. *Compagnie Nationale Air France*,

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[5]Section 301(a) of the LMRA, 29 U.S.C. 185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Courts generally look to the body of law developed under Section 301 of the LMRA in construing Section 1208(b) of the PRA. *National Association of Letter Carriers* v. *United States Postal Service*, 590 F. 2d 1171, 1174 (D.C. Cir. 1978); *Miles* v. *United States Postal Service*, 561 F. 2d 1348 (9th Cir. 1977). See also *Malone* v. *United States Postal Service*, 526 F. 2d 1099 (6th Cir. 1975); *National Association of Letter Carriers* v. *Sombrotto*, 449 F. 2d 915 (2d Cir. 1971).

414 F. Supp. 538 (E.D.N.Y. 1976).[6] Although some courts have recognized an exception for suits brought by local unions with the authorization of their parent union (*BRAC* v. *REA Express, Inc.*, 344 F. Supp. 1370 (S.D.N.Y. 1972); see also *National Post Office Mail Handlers Local 305* v. *United States Postal Service*, 594 F. 2d 988 (4th Cir. 1979)), that exception does not aid petitioner here, because petitioner has shown no such authorization.

Two significant labor policies underlie these decisions. First, the decisions assure that the signatory to the collective bargaining agreement—the national union—can screen the grievances that are pursued beyond the early informal steps, "so that the interests of *all* its principals may be best represented" (*District 100, IAM* v. *Compagnie Nationale Air France*, *supra*, 414 F. Supp. at 541-542 (emphasis in original)). Second, they prevent the chaos that would result "if every subordinate unit were empowered to bring suit" without authorization from the national union (*BRAC* v. *REA Express, Inc.*, *supra*, 344

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[6]Contrary to petitioner's contention (Pet. 5-6), neither this Court's decision in *Retail Clerks International Ass'n, Local Unions Nos. 128 and 633* v. *Lion Dry Goods, Inc.*, 369 U.S. 17 (1962), nor the Ninth Circuit's decision in *Miles* v. *United States Postal Service*, 561 F. 2d 1348 (1977), conflicts with this principle. In *Lion Dry Goods*, two local unions not certified by the NLRB as exclusive bargaining representatives were permitted to sue under Section 301 of the LMRA, but they were suing to enforce a strike settlement agreement that they (not the national union) had negotiated with the employer to end a strike at the employer's two department stores, and their status as employee representatives was not shown to be dependent on the representative status of their parent union. In *Miles*, the court held only that a nonunion employee had standing to sue the Postal Service under Section 1208(b) of the PRA to enforce what he alleged was an oral agreement with a postmaster to hire him on a full-time basis. No attempt to enforce a collective bargaining agreement was involved.

F. Supp. at 1372). To grant standing to petitioner to bring suit, without the authorization of its parent national union, to enforce the collective bargaining agreement signed by the national union would be contrary to these policies.[7]

2. Petitioner attacks the alternative ground for the dismissal of its action—failure to exhaust the grievance procedure[8]—by contending (Pet. 9) that the current dispute was conclusively resolved by the settlement of the 1976 grievance and thus resort to the grievance procedure was unnecessary. But as the district court correctly pointed out (Pet. App. 21), resolution of that very question is properly committed to the grievance machinery rather than to the courts. *Local 103, International Union of Electrical Workers* v. *RCA Corp.*, 516

[7]The fact that the contract violation allegations underlying petitioner's suit are based on both the national agreement and the local agreement (A. 33a-34a) does not require a different conclusion. As noted above (page 2, *supra*), petitioner's right, under Article XXX of the national agreement, to implement the terms of that agreement by negotiations on 22 specified subjects, is limited to the negotiation of provisions consistent with the national agreement. Petitioner was not empowered to take grievances arising under its locally negotiated provisions to arbitration without the consent of the national president. Controls on local unions with respect to their attempts to secure final and binding resolutions of grievances under provisions of local agreements (whether such resolutions are sought through arbitration or through suits in federal court) are obviously important, because interpretations of a local agreement that are inconsistent with other local agreements or with the national agreement could be detrimental to the interests of other employees represented by the national union.

[8]It is a well settled principle of labor law that a union must exhaust the contractual remedies provided in the collective bargaining agreement before seeking judicial intervention. *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564, 566 (1960); *National Post Office Mail Handlers Local No. 305* v. *United States Postal Service, supra*, 594 F. 2d at 991.

F. 2d 1336, 1340-1341 (3d Cir. 1975). Cf. *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543, 546-547 (1964). Because the factual question whether the settlement of the previous dispute governs the present dispute is not for the courts to decide, it is irrelevant whether petitioner could have proven the allegation in its complaint that the two disputes are the same. Similarly, there is no merit to petitioner's related contention (Pet. 9) that because "the allegations of [a complaint] are taken as admitted and [a complaint] is liberally construed in favor of the plaintiff" (*Jenkins* v. *McKeithen*, 395 U.S. 411, 421 (1969)), its allegation respecting the identity of the two disputes precluded dismissal of its suit on exhaustion grounds. That contention also is based on the erroneous premise that the district court is the proper forum for resolving this issue.[9]

[9]We also agree with the district court's suggestion (Pet. App. 18-20) that because the provision of the national agreement setting out the grievance procedure (Art. XV, Section 3) designates only an arbitrator's decision as final and binding, the settlement agreement reached at a pre-arbitration step is not judicially enforceable. See *General Drivers, Warehousemen & Helpers, Local 89* v. *Riss & Co.*, 372 U.S. 517 (1963).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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